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BY  
U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

JUN 20 2003

File: WAC 01 063 53548

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in September of 1991. It is engaged in the leasing of intermodal marine containers. It seeks to employ the beneficiary as its area director of West Coast operations. Accordingly, it endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational manager. The director determined that the record did not demonstrate that the beneficiary's duties had been or would be primarily managerial or executive in nature for either the petitioner or the beneficiary's overseas employer.

Counsel for the petitioner submits a brief, additional information, and a request that the Service Center Director consider the submission as a motion to reopen or reconsider and to not forward the record to the AAO without giving it careful consideration. The record does not contain a decision by the director on the petitioner's request. However, the submission contains the Form I-290B, Notice of Appeal to the Administrative Appeals Office and is timely filed; therefore, the submission will be considered an appeal. On appeal, counsel for the petitioner asserts that the director erred in denying the case.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(C) Certain Multinational Executives and Managers. -  
- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or

subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the beneficiary has been and will be employed in a managerial or executive capacity for the petitioner.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- i. manages the organization, or a department, subdivision, function, or component of the organization;

- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The petitioner clearly requests a finding of eligibility pursuant to the managerial definition of the Act. The petitioner initially stated that the position of area director was and would continue to

be a key position. The petitioner stated that the position included responsibility for general management of the area office, formulation and implementation of strategies for the area, negotiation of contracts with shipping lines and operators throughout the area, and supervision of all the petitioner's personnel. The petitioner concluded that these duties required the area director to exercise discretion over day-to-day operations, including personnel matters, subject only to the general direction of senior regional management.

The director requested additional evidence including a more detailed description of the beneficiary's duties including the percentage of time spent in each of the listed duties. The director also requested the petitioner's organizational chart describing its managerial hierarchy and staffing levels.

In response the petitioner, through its counsel, stated that the beneficiary had been serving in a managerial capacity since employed by the petitioner in 1999. Counsel also stated that the beneficiary was responsible for the marketing and operational functions in the western United States and Canada as well as the U.S. Gulf Coast. Counsel further stated that the beneficiary's duties included traveling throughout the region for the purpose of establishing and renewing various customer equipment leasing contracts and overseeing all activities for the petitioner's equipment at various depot storage and repair facilities. Counsel also indicated that two employees reported to the beneficiary.

Counsel also provides the following description of the beneficiary's duties:

General Management of the San Francisco area office.  
Formulating & Implementing Strategies for the SFO areas.  
[sic]. Negotiating contracts with shipping lines and operators throughout the Area. Maintaining contacts and relations with existing customers and their agents. Daily contact with customers and their agents to obtain Area and global equipment bookings. [sic]. Marketing & Sales for new contacts/relations. Management of the Equipment control & Operations for the SFO Areas. [sic]. Implementing [the petitioner's] M & R procedures.

The director determined that the petitioner would be acting in the capacity of a first-line supervisor and that he would be performing the job functions himself. The director noted, that if the beneficiary performed the function himself, the Bureau would view the position as a staff officer position or a specialist position and not a managerial position.

On appeal, counsel for the petitioner asserts that the beneficiary is a manager of an essential function. Counsel describes the essential function as the function of leasing intermodal marine containers. Counsel also asserts that, as the beneficiary

supervises two staff members, by giving out work assignments, reviewing their work, conducting annual performance reviews, and having the authority to hire and fire, that the beneficiary need not function at a senior level within the organizational hierarchy. Counsel also includes a statement from the petitioner that further describes the beneficiary's duties. The statement also indicates that the beneficiary oversees the day-to-day operations of the petitioner's West Coast and Gulf region.

Counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the Bureau will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). The petitioner's description of the beneficiary's duties confirms that the beneficiary is involved in the day-to-day operational functions of the petitioner. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner stated, through its counsel, that the beneficiary travels throughout the region establishing and renewing contracts and overseeing the petitioner's equipment at various depot storage and repair facilities and that the beneficiary has daily contact with customers and their agents to obtain equipment bookings. The petitioner's description of the beneficiary's duties is indicative of an individual performing the petitioner's essential function rather than managing the function. The duties described are not incidental to the beneficiary's position but, instead, are the primary duties of the position. Managers plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. In the case at hand the petitioner has provided a position description showing that the beneficiary performs the petitioner's major functions and work.

Counsel's assertion that the beneficiary's supervision of two lower level employees negates the requirement that the beneficiary perform at a senior level with respect to the claimed function is not persuasive. If the petitioner had established that the beneficiary managed an essential function, the petitioner would also be required to demonstrate that the beneficiary functioned at a senior level with respect to the function managed.

In sum, the record contains insufficient evidence to demonstrate that the beneficiary has been employed in a primarily managerial capacity or that the beneficiary's duties in the proposed position will be primarily managerial. The descriptions of the beneficiary's job duties are indicative of an individual performing the operational tasks necessary to conduct the day-to-day business of the enterprise. The description of the duties to be performed by the beneficiary does not demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does

not sufficiently demonstrate that the beneficiary has managed or will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties. The petitioner has not established that the beneficiary will be employed in a primarily managerial capacity.

The second issue in this proceeding is whether the beneficiary managed an essential function of the beneficiary's overseas employer in one of the three years prior to entering the United States as a nonimmigrant.

Counsel asserts that the petitioner's previous counsel misunderstood the director's request for evidence regarding the beneficiary's duties abroad. Counsel explains that previous counsel focused on the beneficiary's current duties abroad when stating that the beneficiary had limited duties abroad. Counsel notes that the request for evidence was phrased in the present tense, thus, causing the confusion. Counsel asserts that the beneficiary was charged with establishing and managing the company's operations for the Middle East and managed the same essential function as he does now.

Counsel's explanation regarding the confusing information submitted by previous counsel in regard to this issue is accepted. However, counsel and the petitioner described the beneficiary's duties for the overseas employer as being essentially similar to the beneficiary's duties for the United States entity. As noted above, an individual who performs an essential function rather than managing the function through the work of others is not considered to be employed in a managerial capacity. *Matter of Church Scientology International, supra.*

The petitioner has not provided sufficient evidence to overcome the director's determination on this issue.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.